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Supreme Court of the United States

OCTOBER TERM, 1929—No. 32

ANNA URAVIC, as administratrix of the goods, chattels and credits which were of Anton Uravic, deceased,

Petitioner,

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

Respondents.

BRIEF FOR PETITIONER.

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TABLE OF CONTENTS.

PAGE

I. JURISDICTION 1

II. OPINIONS BELOW 1

III. STATEMENT OF FACTS 2

IV. QUESTIONS INVOLVED 5

POINT I—Neither the Merchant Marine Act itself nor the decision of this Court which interprets it indicates that the right of a longshoreman to recover against his employer is dependent on the registry of the vessel on which the accident takes place 6

POINT II—Section 33 of the Merchant Marine Act of 1920 is designed to affect the relationship of employer and employee. It does not affect vessels as such 8

POINT III—The weight of authority of the decided cases in the inferior Courts is that Section 33 of the Merchants Marine Act of 1920 is applicable in the case of a longshoreman injured or killed on a foreign vessel lying in domestic waters 11

LAST POINT—The judgment of the Court of Appeals and the judgment entered on its remittitur by the Supreme Court for Kings County should be reversed 12

TABLE OF CASES CITED:

PAGE

Gustav Ranstrom v. *International Stevedoring Company*, Supreme Court of the State of Washington, May 27, 1929, not yet reported in State Reporter but found in 277 Pac. 992..... 11

International Stevedoring Co. v. *Haverty*, 272 U. S. 50 .....3, 6, 7

Jamison v. *Encarnacion*, 281 U. S. 635..... 8, 9

Mahoney v. *International Elevating Co., Inc.*, 23 Fed. Rep. 2nd, 130..... 11

Merchant Marine Act of 1920, Section 33 (Jones Act) 3, 8

Panama R. R. Co. v. *Johnson*, 264 U. S. 375..... 7, 8

Patterson v. *Bark Endora*, 190 U. S. 169..... 10

Peterson v. *Independent Stevedore Company*, United States District Court, District of Oregon, March 18th, 1929; not yet reported in Fed. Rep. but found in 1929 American Maritime Cases 629... 11

Philip McGinn v. *North Coast Stevedoring Company*, 149 Wash. 1..... 11

Raolaslavic v. *New York Central R. R. Co.*, 245 N. Y. 91..... 7

Resigno v. *F. Jarka Co., Inc.*, 248 N. Y. 537...2, 4, 5, 10

Sandberg v. *McDonald*, 248 U. S. 185..... 10

Schotis v. *North Coast Stevedoring Co.*, Superior Court, State of Washington, found in 1928 American Maritime Cases 616..... 11

Strathearn S. S. Co. v. *Dillon*, 252 U. S. 348..... 10

Williams v. *Oceanic Stevedoring Company*, 27 Fed. Rep. 2nd, 905..... 11

Zarowitch v. *F. Jarka Co., Inc.*, 24 Fed. Rep. 2nd, 187 11

Supreme Court of the United States

OCTOBER TERM, 1929—NO. 581.

ANNA URAVIC, as administratrix of the goods, chattels and credits which were of Anton Uravic, deceased,

Petitioner,

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

Respondents.

BRIEF FOR PETITIONER.

I. *Jurisdiction.*

This case comes here on a writ of certiorari to the Supreme Court of the State of New York pursuant to the provisions of the United States Code, Title 28, Section 344 (b). The petition was filed on the 18th day of January, 1930, and granted on the 3rd day of March, 1930.

II. *Opinions Below.*

The writ seeks to review a final judgment of the Court of Appeals of the State of New York entered on October 22nd, 1929, affirming a judgment of the Supreme Court of the State of New York dismissing the complaint in the action.

Following the judgment of the Court of Appeals and pursuant to an order of that court, the record and the

proceedings in the Court of Appeals was remitted to the Supreme Court of the State of New York for the County of Kings, where the judgment of the Court of Appeals was made the judgment of the Supreme Court. The order remitting the record appears at folios 299-300 of the record filed herein.

The Court of Appeals wrote no opinion. However, in affirming the judgment below it did so on the authority of "*Resigno* v. *F. Jarka Co., Inc., 246 N. Y. 537*". The correct citation for that case is 248 N. Y. 225.

The judgment of the Court of Appeals appears at page 99 of the record. The decision is reported at 252 N. Y. 530.

The trial Court wrote no opinion. However, on the trial there was extended oral argument between the Court and trial counsel, which shows that the dismissal was on a ground involving a federal question. The argument on the dismissal appears on pages 67-70 of the record.

III. *Statement of Facts.*

The action was brought originally against two defendants.

It was discontinued as to one of them at the beginning of the trial and proceeded to trial against the other defendant F. Jarka Company, Inc. (fol. 69).

The plaintiff's intestate, on June 13th, 1926, was employed by F. Jarka Company, Inc., the defendant, an American corporation engaged in the business of loading and unloading steamships (fols. 76, 27-28, 72, 18). Pursuant to such employment he was assisting as a longshoreman in the unloading of the steamship "Hamburg",

which at the time was in the navigable waters of New York Harbor (fols. 96, 20, 103).

Plaintiff's intestate was an American citizen (fol. 73). Defendant was a Delaware corporation (fol. 72). The steamship "Hamburg" was a vessel of German registry (fol. 70).

It was conceded that the plaintiff's intestate died on July 13th, 1926, as a result of injuries received on the same day on board the steamship "Hamburg" (fol. 73).

On the trial there was evidence from which a jury could have found that the plaintiff's intestate was caused to die by the negligence of defendant F. Jarka Company, Inc., or the negligence of its employees.

Plaintiff relied on Section 33 of the Merchant Marine Act of 1920 as interpreted by the decision of this Court in *Haverty* v. *International Stevedoring Company*, 272 U. S. 50, and claimed that this statute made the defendant liable (fols. 70, 201-202).

At the close of plaintiff's evidence, the defendant moved to dismiss "upon the ground it appears affirmatively that the negligence was the negligence of a fellow-employee of the plaintiff for which this defendant is not responsible" (fol. 201).

The trial Court, after argument and consideration of the effect of *Haverty* v. *International Stevedoring Company*, 272 U. S. 50, held that Section 33 of the Merchant Marine Act of 1920 (Jones Act) did not apply to the case at bar because the accident happened on a vessel of foreign registry (fols. 206-207).

The complaint was thereupon dismissed. An exception was taken to the Court's ruling (fol. 209).

Thereafter, on appeal to the Appellate Division of the Supreme Court from the judgment entered on the

dismissal of the complaint, the judgment was affirmed (fols. 253-257).

Thereafter, on appeal, by permission, to the Court of Appeals, the judgment of the Appellate Division of the Supreme Court was affirmed on the authority of the case of *"Resigno* v. *F. Jarka Co., Inc., 246 N. Y. 537"* (fols. 295-300). The correct citation for this case is 248 N. Y. 225.

In the case of *Resigno* v. *F. Jarka Co., Inc.*, the Court of Appeals said at page 230:

> "We hold that section 33 of the Merchant Marine Act of 1920, like its parent, section 20 of the act of 1915, is to be limited to seamen at work upon domestic vessels. We do not doubt the power of Congress to give a broader remedy. Irrespective of the nationality of the vessel, the remedy may be extended to any one who is injured within the territory of our waters. We are unable to convince ourselves that the power has been exercised."

and on page 233:

> "The court is unanimous in its holding that seamen in the strict or proper sense are without the purview of the act when working upon foreign vessels. Whatever division there is among us has its origin in a supposed distinction between the remedy available to such seamen and that available to stevedores. The suggestion is that in cases of the latter order, the nationality of the vessel is to be rejected as a test. The judgment of the court is that the test does not vary with the nature of the service."

In the *Resigno* case, Judge Crane, who concurred in the result, dissented from the opinion of the majority

so far as it dealt with longshoremen. Judge Crane said at page 239:

> "However, even though the Jones Act does not apply to foreign ships and their crews while in territorial waters, it does not follow that longshoremen now considered to be American seamen are not within the purposes of the act, even when working on ships of other nationalities."

IV. *Questions Involved.*

1. Whether Section 33 of the Merchant Marine Act of June 5th, 1920, commonly referred to as the Jones Act, applies in an action between a plaintiff, who is the personal representative of a deceased American longshoreman, and a defendant, which is an American stevedoring company, and was the employer of the plaintiff's intestate, where the longshoreman was killed through the negligence of the defendant or of its employees while he was working on a vessel of foreign registry lying at the time in navigable waters of the United States, there being no privity of contract between the plaintiff's intestate and the owner of the vessel. In other words, does the happening of the accident on a foreign vessel mean that it happens on foreign territory?

2. If so, has the Jones Act any extra-territorial application?

3. Can both these questions be answered by a decision that Congress in passing the Jones Act, was regulating an American master and servant relationship irrespective of vessels or their nationality?

POINT I.

Neither the Merchant Marine Act itself nor the decision of this Court which interprets it indicates that the right of a longshoreman to recover against his employer is dependent on the registry of the vessel on which the accident takes place.

The right of a longshoreman to recover damages against his employer on account of injuries caused by the negligence of a fellow-employee depends upon Section 33 of the Merchant Marine Act of 1920 as interpreted by the case of *International Stevedoring Company* v. *Haverty*, 272 U. S. 50.

The statute itself does not expressly make the liability of the employer depend on the happening of the accident on a vessel. It provides as follows:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall

> be under the court of the district in which the defendant employer resides or in which his principal office is located."

With regard to longshoremen, however, this Court has held:

> "* * * that in this statute, seaman is to be taken to include stevedores employed in maritime work on navigable waters as the plaintiff was."
>
> *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, at 52.

The only limitation, therefore, which this Court has placed upon the right of longshoremen to recover under Section 33 of the Merchant Marine Act, is that the longshoreman must be employed in maritime work on navigable waters. This, no doubt, follows from the definition of the act as an amendment of the existing maritime law. *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375.

There is nothing in the opinion limiting the application of the statute to accidents happening to longshoremen employed in maritime work on vessels of a particular registry.

Indeed, the opinion does not say that the maritime work must be performed on a vessel at all. It is sufficient if it be performed on navigable waters.

It is not beyond imagination that the work of a seaman may be done while he is in the sea itself. *Raolaslavic* v. *New York Central R. R. Co.*, 245 N. Y. 91.

POINT II.

Section 33 of the Merchant Marine Act of 1920 is designed to affect the relationship of employer and employee. It does not affect vessels as such.

The Court of Appeals has reached its conclusion because of assumptions which, the petitioner submits, are erroneous. That Court has assumed that Section 33 of the Merchant Marine Act does not apply to members of the crew of a foreign vessel because, where they are concerned, the locus of the tort is a foreign vessel and because the act was not meant to apply to any but American vessels. From this it deduces a similar law for longshoremen.

However, Section 33 of the Merchant Marine Act makes no reference to vessels at all. It refers only to seamen and their employers and is designed to govern the master and servant relationship wherever that relationship comes within the presumptive intention of Congress.

In *Panama Railroad Co.* v. *Johnson*, 264 U. S. 375, Mr. Justice Van Devanter, writing for the Court, said of Section 33 of the Jones Act, at page 387:

> "The statute is concerned with the relative rights and obligations of seamen and their employers arising out of personal injuries sustained by the former in the course of their employment."

In *Jamison* v. *Encarnacion*, 281 U. S. 635, this Court held that the Federal Employers' Liability Act, which

by Section 33 of the Merchant Marine Act is made a part of the maritime law,

> "was adopted for the relief of a large class of persons employed in hazardous work in the service described. It abrogates the common law rule that makes every employee bear the risk of injury or death through the fault or negligence of fellow servants and applies the principle of *respondeat superior* (Sec. 1), eliminates the defense of contributory negligence and substitutes a rule of comparative negligence (Sec. 3), abolishes the defense of assumption of risk where the violation of a statute enacted for the safety of employees is a contributing cause (Sec. 4) and denounces all contracts, rules and regulations calculated to exempt the employer from liability created by the Act. (Sec. 5.)"

It would appear, therefore, that Section 33 of the Merchant Marine Act is primarily a master and servant statute. It is concerned with vessels incidentally and only because such employment is usually carried on on board vessels. Such an incidental connection of vessels to the subject matter of the employment should not give rise to the conclusion that the registry of the vessel on which the accident takes place determines the application of the statute.

If the Merchant Marine Act of 1920 does not apply to the members of the crew of a foreign vessel it is because Congress did not intend to legislate with regard to a relationship of master and servant which is based on a contract of employment ordinarily made under the laws of a foreign country and which exists within the United States only transiently. Although Congress, no

doubt, has the power to do so, it may well be doubted that Congress did intend to affect an essentially foreign relationship with legislation of such importance where the statute contains no specific words to that effect.

Strathearn S. S. Co. v. *Dillon*, 252 U. S. 348;
Sandberg v. *McDonald*, 248 U. S. 185.

However, with regard to American longshoremen, whose contracts of employment are made and whose work is performed only in the United States, it is submitted that there arises no problem involving foreign interests if the statute is applied to them as a *class* whether they are working on vessels of United States or foreign registry.

Patterson v. *Bark Endora*, 190 U. S. 169.

As Judge Crane said in his dissenting opinion in *Resigno* v. *F. Jarka Co., Inc.*, 248 N. Y. 225, at 240:

> "This class of specialized workers connected with maritime service is to be covered by the act of 1920 and included within its provisions; not merely those few members of the class who happen for the time being to be working upon American ships. Stevedores and longshoremen would receive very little benefit from this act of Congress were it so limited. Unless the act has this general application, a shift of a gang of longshoremen from a ship on one side of a dock to a ship on the other side, might also shift the law of responsibility. Did Congress intend to make the law of responsibility for this *class* of workmen, or did it intend to leave it to these toilers by hand to select that law? The question must answer itself."

POINT III.

The weight of authority of the decided cases in the inferior Courts is that Section 33 of the Merchant Marine Act of 1920 is applicable in the case of a longshoreman injured or killed on a foreign vessel lying in domestic waters.

The following is a list of the cases so holding:

Zarowitch v. *F. Jarka Co., Inc.*, 21 Fed. Rep. 2nd, 187, United States District Court for the Eastern District of New York;

Mahoney v. *International Elevating Co., Inc.*, 23 Fed. Rep. 2nd, 130, United States District Court for the Eastern District of New York;

Williams v. *Oceanic Stevedoring Company*, 27 Fed. Rep. 2nd, 905, United States District Court for the Southern District of Texas;

Peterson v. *Independent Stevedore Company*, United States District Court, District of Oregon, March 18th, 1929; not yet reported in Fed. Rep. but found in 1929 American Maritime Cases 629;

Philip McGinn v. *North Coast Stevedoring Company*, 149 Wash. 1, Supreme Court of the State of Washington;

Schotis v. *North Coast Stevedoring Co.*, Superior Court, State of Washington, found in 1928 American Maritime Cases 616;

Gustav Ranstrom v. *International Stevedoring Company*, Supreme Court of the State of

Washington, May 27, 1929, not yet reported in State Reporter but found in 277 Pac. 992.

So far as known, New York is the only jurisdiction in which a contrary rule has been laid down.

The decision in *Resigno* v. *F. Jarka Co., Inc.*, 248 N. Y. 225, has been followed in the case of *William O'Reilly* v. *Cunard Steamship Company* in the United States District Court for the Southern District of New York. That case was decided on July 20, 1928, and is now on appeal to the Circuit Court of Appeals for the 2nd Circuit.

LAST POINT.

The judgment of the Court of Appeals and the judgment entered on its remittitur by the Supreme Court for Kings County should be reversed.

New York, N. Y., August 27, 1930.

Respectfully submitted,

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